

## Message Text

UNCLASSIFIED

PAGE 01 NEW DE 12698 01 OF 02 220859Z  
ACTION SNM-05

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TO SECSTATE WASHDC 3519

UNCLAS SECTION 1 OF 2 NEW DELHI 12698

E.O. 11652: N/A  
TAGS: SNAR, IN  
SUBJECT: NARCOTICS LAWS

REF: STATE 170187

THE FOLLOWING REPORT RESPONDS TO THE REQUEST FOR INFORMATION ON INDIAN NARCOTICS LAWS CONTAINED IN REFTEL. REPORT FOLLOWS OUTLINE OF SPECIFIC QUESTIONS IN REFTEL PARA 2.

### SUBPARA 1: POSSESSION

(A) THERE IS NO DIFFERENTIATION IN THE PENALTY FOR THE UNLAWFUL POSSESSION OF THE FOLLOWING NARCOTIC SUBSTANCES: COCA LEAF, COCAINE OR ANY OTHER COCA DERIVATIVE, ANY OPIUM DERIVATIVE (INCLUDING PREPARED OPIUM, MORPHINE AND HEROIN BUT NOT INCLUDING RAW OPIUM), ANY EXTRACT OR TINCTURE OF THE HEMP PLANT (BUT NOT INCLUDING THE PLANT ITSELF, ITS PARTS OR RESIN), AND ANY NARCOTIC SUBSTANCE WHICH IS THE SUBJECT OF AN OFFICIAL NOTIFICATION ISSUED IN ACCORDANCE WITH AN INTERNATIONAL TREATY. THE PENALTY FOR POSSESSION IS IMPRISONMENT UP TO THREE YEARS AND A POSSIBLE FINE FOR A FIRST OFFENSE, AND UP TO FOUR YEARS AND A POSSIBLE FINE FOR ANY SUBSEQUENT OFFENSE.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 NEW DE 12698 01 OF 02 220859Z

(B) THERE IS NO QUALIFYING AMOUNT STATED IN THE LAW. IN PRACTICE LAW ENFORCEMENT IS TARGETED ONLY AT TRAFFICKING, AND POSSESSION FOR PERSONAL USE IS NOT PROSECUTED EXCEPT IN CONNECTION WITH ANOTHER OFFENSE.

(C) (1 AND 2) THE PENALTIES FOR POSSESSION ARE THE SAME AS FOR OTHER OFFENSES.

(C) (3) THE LENGTH OF THE PRISON TERM AND THE IM-  
POSITION OF A FINE IS AT THE DISCRETION OF THE  
MAGISTRATE.

SUBPARA 2: TRAFFICKING

(A) THE SALE OF ANY OF THE NARCOTIC SUBSTANCES  
IDENTIFIED IN SUBPARA 1 (A) ABOVE IS AN OFFENSE. IN  
ADDITION, THE IMPORT AND EXPORT OF THESE SUBSTANCES AS  
WELL AS RAW OPIUM AND MARIJUANA PLANTS, PARTS OF PLANTS  
AND RESIN IS PROHIBITED (THESE UNPROCESSED AND PROCESSED  
SUBSTANCES TOGETHER COMPRISE THE CATEGORY "DANGEROUS  
DRUGS"). GOVERNMENT RULES REGULATING THE CULTIVATION  
OF THE OPIUM POPPY REQUIRE THAT ALL HARVESTED RAW OPIUM  
BE SOLD TO THE APPROPRIATE GOVERNMENT AGENTS. FURTHER  
UNLAWFULLY ENGAGING IN OR CONTROLLING "ANY TRADE WHEREBY  
A DANGEROUS DRUG IS OBTAINED OUTSIDE INDIA AND SUPPLIED  
TO ANY PERSON OUTSIDE INDIA" IS PUNISHABLE BY A FINE  
UPTO RS.1000 (DOLS.125).

(B) THE PENALTY FOR THESE OFFENSES IS THE SAME AS  
STATED IN SUBPARA 1 (A) ABOVE

(C) TRAFFICKING PER SE IS NOT IDENTIFIED AS AN  
OFFENSE. THE LAW SPECIFIES SUCH ACTIVITIES AS POSSESSION,  
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PAGE 03 NEW DE 12698 01 OF 02 220859Z

SALE, IMPORTATION, EXPORTATION, AND TRANSPORTATION.

(D) WHILE THERE IS NO CONSPIRACY PROVISION, THE LAW  
PUNISHES "WITH THE PUNISHMENT PROVIDED FOR THE OFFENSE"  
ANY PERSON WHO (1) ATTEMPTS TO COMMIT A NARCOTICS OFFENSE,  
OR (2) ATTEMPTS TO CAUSE SUCH AN OFFENSE TO BE  
COMMITTED, PROVIDED THE PERSON DOES ANY ACT TOWARDS THE  
COMMISSION OF THE OFFENSE. ALSO ABETMENT OF A NARCOTICS  
OFFENSE OUTSIDE INDIA IS AN OFFENSE, WHERE OR NOT THE  
PRINCIPAL OFFENSE WAS COMMITTED IN CONSEQUENCE OF THE  
ABETMENT.

SUBPARA 3: CULTIVATION

(A-1) THE CULTIVATION OF CANNABIS IS NOT PROHIBITED.

(A-2) THE CULTIVATION OF THE COCA PLANT IS PROHIBITED.

(A-3) THE CULTIVATION OF THE OPIUM PLANT IS PRO-  
HIBITED EXCEPT UNDER GOVERNMENT LICENSE. THE PUNISHMENT  
FOR THE CULTIVATION OF THE COCA OR OPIUM PLANT IS THE  
SAME AS STATED IN SUBPARA 1-A.

(B) APPROXIMATELY 50,000 - 60,000 HECTARES OF OPIUM POPPY CULTIVATION ARE LICENSED BY THE GOVERNMENT ON A ONE-CROP A YEAR BASIS. ALL OF THE HARVESTED OPIUM MUST BE SOLD TO GOVERNMENT AGENTS FOR PROCESSING IN THE TWO GOVERNMENT OPIUM FACTORIES. ALMOST ALL OF THE OPIUM IS SOLD TO FOREIGN PHARMACEUTICAL FIRMS. THE REMAINDER IS MADE AVAILABLE THROUGH STATE GOVERNMENTS TO DOMESTIC PHARMACEUTICAL FIRMS OR, TO A VERY SMALL DEGREE, TO REGISTERED OPIUM ADDICTS.

(C) THE PENALTY AS STATED IN SUBPARA 1-A ABOVE IS THE SAME FOR THE FOLLOWING OFFENSES: THE UNLAWFUL MANUFACTURE (1) OF MEDICINAL HEMP (I.E. ANY EXTRACT OR TINCTURE OF THE MARIJUANA PLANT),  
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 NEW DE 12698 01 OF 02 220859Z

(2) OF ANY PREPARATION CONTAINING COCAINE, AND  
(3) OF OPIUM (I.E. OPIUM PREPARED FOR SMOKING), MEDICINAL OPIUM OR ANY PREPARATIONS CONTAINING MORPHINE OR HEROIN.

#### SUBPARA 4: FINANCIAL

(A) THERE IS NO OFFENSE RELATED TO FINANCIAL SUPPORT OF A NARCOTICS OFFENSE EXCEPT AS SUCH ACTION MIGHT BE CONSIDERED AN ATTEMPT TO CAUSE A NARCOTICS OFFENSE (SEE SUBPARA 2-D). THERE IS CONCERN FOR THIS ASPECT OF THE DRUG TRAFFICKING PROBLEM ONLY INsofar AS IT RELATES TO SMUGGLING AND TAX EVASION.

(B) INDIA HAS VERY STRICT FOREIGN EXCHANGE CONTROLS. IN GENERAL, THE EXPORT OF CURRENCY OR THE MAINTANANCE OF FOREIGN BANK ACCOUNTS IS NOT PERMITTED. VIRTUALLY ANY INTERNATIONAL TRANSACTION INVOLVING INDIAN OR FOREIGN MONEY REQUIRES THE SPECIFIC APPROVAL OF THE RESERVE BANK.

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PAGE 01 NEW DE 12698 02 OF 02 221041Z  
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SUBPARA 5

(A) SECTION 76 OF THE CODE OF CRIMINAL PROCEDURE (HEREINAFTER C.C.P.) REQUIRES A POLICE OFFICER ARRESTING AN INDIVIDUAL PURUANT TO A WARRANT OF ARREST TO PRESENT THE LATTER BEFORE THE COURT ISSUING THE WARRANT WITHIN TWENTY-FOUR HOURS. MOST WARRANTS IN NARCOTICS CASES WILL ISSUE FROM THE COURT OF THE MAGISTRATE OF THE FIRST CLASS. THIS COURT HAS THE AUTHORITY TO IMPOSE A SENTENCE OF IMPRISONMENT WHICH MAY NOT EXCEED THREE YEARS OR OF A FINE NOT EXCEEDING FIVE-HUNDRED RUPEES (ABOUT DOLS60) OR BOTH.

IF THE OFFENSE (E.G. NARCOTICS) IS BAILABLE, THE COURT BEFORE WHOM THE ACCUSED IS PRESENTED MAY RELEASE THE LATTER ON A BAIL IN A MANNER PROVIDED BY SECTION 436 OF THE C.C.P.

IF, HOWEVER, AN INDIVIDUAL IS APPREHENDED BY THE POLICE PRIOR TO THE ISSUANCE OF A WARRANT OF ARREST, UNCLASSIFIED

UNCLASSIFIED

PAGE 02 NEW DE 12698 02 OF 02 221041Z

THE ACCUSED MUST BE PRESENTED BEFORE A MAGISTRATE WITHIN TWENTY-FOUR HOURS. THE COURT IN THIS INSTANCE MAY REMAND THE ACCUSED TO THE CUSTODY OF THE POLICE FOR A PERIOD WHICH IS NOT TO EXCEED SIXTY DAYS IF SUCH DETENTION IS REQUIRED FOR THE COMPLETION OF THE STATE'S INVESTIGATION. AT THE EXPIRATION OF SIXTY DAYS THE INDIVIDUAL IN DETENTION MAY BE RELEASED ON BAIL.

THE EMBASSY HAS BEEN TIMELY NOTIFIED AND HAS BEEN PERMITTED PROMPT ACCESS TO INDIVIDUALS CHARGED WITH NARCOTICS OFFENSES. THERE IS NO INDICATION THAT THE GOI WILL ABANDON THIS PRACTICE.

(B) AFTER THE SEIZURE OF NARCOTICS, THE SAMPLE IS

FORWARDED TO THE FORENSIC SCIENCE LABORATORY FOR ITS CHEMICAL ANALYSIS. THIS ANALYSIS IN THE LABORATORY MORE OFTEN THAN NOT ENTAILS 4-5 WEEKS.

THE FORENSIC SCIENCE LABORATORY SEND THE REPORT TO THE LEGAL WING OF CRIME BRANCH WHICH THEN PREPARES THE "CHALLAN" (THE LIST OF CHARGES) AND FILES IT IN A COURT.

THE TRIAL MAY BE DELAYED BY THE COURT DEPENDING UPON WHETHER THE ACCUSED PLEADS GUILTY; OR WHETHER THE QUANTITY OF THE NARCOTICS IS SMALL OR LARGE. THE TRIAL, IF HELD, GENERALLY LASTS A DAY. HOWEVER, WITH CONTINUANCES, THE TRIAL MAY EXTEND BEYOND A DAY.

(C) SECTION 374 OF THE C.C.P. STATES THAT A PERSON CONVICTED IN THE MAGISTRATE'S COURT MAY APPEAL HIS CONVICTION TO THE NEXT HIGHER COURT (I.E. THE COURT OF SESSION). AN ACCUSED PERSON DOES NOT HAVE RIGHT TO APPEAL HIS CONVICTION IF THE LATTER IS PREDICATED UPON THE UNCLASSIFIED

UNCLASSIFIED

PAGE 03 NEW DE 12698 02 OF 02 221041Z

ENTERING OF A PLEA OF GUILTY. AN APPEAL ALSO IS NOT PERMITTED WHERE THE SENTENCE OF IMPRISONMENT DOES NOT EXCEED THREE MONTHS OR THE FINE DOES NOT EXCEED ONE-HUNDRED RUPEES.

IT MUST BE NOTED THAT SECTION 377 PERMITS THE GOVERNMENT TO APPEAL TO THE HIGH COURT A SENTENCE ON THE BASIS OF ITS INADEQUACY. THE ACCUSED IN A SECTION 377 PROCEEDING MAY SHOW CAUSE WHY THE SENTENCE SHOULD NOT BE AUGMENTED OR WHY THE CONVICTION SHOULD BE REVERSED. THE ACCUSED MAY ALSO ARGUE FOR A REDUCTION OF THE SENTENCE.

(D) SECTION 304 PROVIDES FOR LEGAL AID BY THE HIGHER COURTS (I.E. THE COURT OF SESSION AND THE HIGH COURT). STATE GOVERNMENTS ARE NOT REQUIRED TO AWARD LEGAL ASSISTANCE IN THE MAGISTRATE COURTS.

(E) A COURT, PURSUANT TO SECTION 360, MAY PLACE A CONVICTED PERSON ON PROBATION UPON THE POSTING OF A BOND (WITH OR WITHOUT SURETIES). PRIOR TO INVOKING THIS SECTION, THE COURT MUST BE CERTAIN THAT THE INDIVIDUAL WHO HAS BEEN CONVICTED OR THE SURETY HAS IMMOVABLE PROPERTY WITHIN THE JURISDICTION OF THE COURT. THEREFORE, IT IS UNLIKELY THAT AN AMERICAN CONVICTED OF A NARCOTICS OFFENSE COULD AVAIL HIMSELF OF THIS PROVISION OF THE LAW.

(F) THE GOI DOES NOT GENERALLY EXPEL (IN LIEU OF TRIAL) NARCOTICS OFFENDERS.

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